

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

MISSISSIPPI STATE CONFERENCE OF THE  
NATIONAL ASSOCIATION FOR THE  
ADVANCEMENT OF COLORED PEOPLE; DR.  
ANDREA WESLEY; DR. JOSEPH WESLEY;  
ROBERT EVANS; GARY FREDERICKS; PAMELA  
HAMNER; BARBARA FINN; OTHO BARNES;  
SHIRLINDA ROBERTSON; SANDRA SMITH;  
DEBORAH HULITT; RODESTA TUMBLIN; DR.  
KIA JONES; MARCELEAN ARRINGTON;  
VICTORIA ROBERTSON,

*Plaintiffs,*

vs.

STATE BOARD OF ELECTION COMMISSIONERS;  
TATE REEVES, *in his official capacity as Governor of  
Mississippi*; LYNN FITCH, *in her official capacity as  
Attorney General of Mississippi*; MICHAEL WATSON,  
*in his official capacity as Secretary of State of  
Mississippi,*

*Defendants,*

AND

MISSISSIPPI REPUBLICAN EXECUTIVE  
COMMITTEE,

*Intervenor-Defendant.*

**CIVIL ACTION NO.  
3:22-cv-734-DPJ-HSO-LHS**

**PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION FOR THE  
COURT TO TAKE JUDICIAL NOTICE**

Plaintiffs the Mississippi State Conference of the National Association for the Advancement of Colored People, Dr. Andrea Wesley, Dr. Joseph Wesley, Robert Evans, Gary Fredericks, Pamela Hamner, Barbara Finn, Otho Barnes, Shirlinda Robertson, Sandra Smith, Deborah Hulitt, Rodesta Tumblin, Dr. Kia Jones, Marcelean Arrington, and Victoria Robertson

(collectively, “Plaintiffs”) respectfully request that this Court deny Defendants’ Motion for the Court to Take Judicial Notice.

1. Defendants seek judicial notice of data from the Current Population Survey Voting and Registration Supplement (“CPS”), which is unreliable and disputed.

2. The CPS is a self-reported, unverified survey of voting behavior administered by the U.S. Census Bureau. Data from the CPS is the subject of considerable controversy in the political science literature as a measure of political participation by race, because of the well-known tendency of survey respondents to over-report voter participation, and the well-known differential rates of over-reporting of voting between Black and White survey respondents, whereby Black respondents tend to over-report voting at higher rates than White respondents.

3. Defendants initially noticed an expert witness, Dr. Peter Morrison, to introduce and discuss the CPS data, but then chose to withdraw this witness after Plaintiffs’ experts contested the accuracy and import of the CPS data.

4. Because the CPS data as a measure of political participation by race is the subject of reasonable dispute and its accuracy can reasonably be questioned, it is not judicially noticeable under Federal Rule of Evidence 201.

5. Plaintiffs hereby incorporate in further support of this Motion their accompanying Memorandum of Law and the following exhibits:

Exhibit 1 – November 22, 2023 Responsive Report of Dr. Byron D’Andra Orey

Exhibit 2 – January 29, 2024 Second Rebuttal Report of Dr. Jordan Ragusa

WHEREFORE, pursuant to Rule 201, Plaintiffs respectfully request that this Court deny Defendants’ Motion for the Court to Take Judicial Notice. If their motion is granted, Plaintiffs reserve all rights to elicit expert testimony from Dr. Byron D’Andra Orey and Dr. Jordan Ragusa on the unreliability of the CPS voter participation data.

This the 16th day of February, 2024.

/s/ Joshua Tom

Joshua Tom, MSB 105392  
*jtom@aclu-ms.org*  
ACLU OF MISSISSIPPI  
101 South Congress Street  
Jackson, MS 39201  
(601) 354-3408

Robert B. McDuff, MSB 2532  
*rbm@mcdufflaw.com*  
MISSISSIPPI CENTER FOR JUSTICE  
767 North Congress Street  
Jackson, MS 39202  
(601) 969-0802

Carroll Rhodes, MSB 5314  
Law Offices of Carroll Rhodes  
*crhodes6@bellsouth.net*  
PO Box 588  
Hazlehurst, MS 39083  
(601) 894-1464

John P. Lavelle, Jr.  
**MORGAN, LEWIS & BOCKIUS LLP**  
1701 Market Street  
Philadelphia, PA 19103-2921  
Telephone: +1.215.963.4824  
Facsimile: +1.215.963.5001  
*john.lavelle@morganlewis.com*

Drew C. Jordan  
**MORGAN, LEWIS & BOCKIUS LLP**  
1111 Pennsylvania Ave. NW  
Washington, DC 20004-2541  
Telephone: +1.202.739.5962  
Facsimile: +1.202.739.3001  
*drew.jordan@morganlewis.com*

Ari J. Savitzky  
*asavitzky@aclu.org*  
Casey Smith  
*csmith@aclu.org*  
Ming Cheung  
*mcheung@aclu.org*  
ACLU FOUNDATION  
125 Broad Street, 18th Floor  
New York, New York 10004  
(212) 549-2500

Patricia Yan  
*pyan@aclu.org*  
ACLU FOUNDATION  
915 15th Street NW  
Washington, DC 20005  
(202) 457-0800

Ezra D. Rosenberg  
*erosenberg@lawyerscommittee.org*  
Jennifer Nwachukwu  
*jnwachukwu@lawyerscommittee.org*  
David Rollins-Boyd  
*drollins-boyd@lawyerscommittee.org*  
LAWYERS' COMMITTEE FOR CIVIL RIGHTS  
UNDER LAW  
1500 K Street NW Suite 900  
Washington, DC 20005  
(202) 662-8600

*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I, Joshua Tom, do certify that on this day I caused to be served a true and correct copy of the foregoing by electronic mail to all counsel of record.

This the 16th day of February, 2024.

/s/ Joshua Tom

Joshua Tom